
(2003) 04 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 5020 of 2002

Dr. Ajay Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Bihar and Orissa Excise Rules, 1919 — Rule 53

Citation : (2003) 3 PLJR 31

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Rajendra Pd. Singh and Pushkar Narain Shahi, for the Appellant;
S.K. Ghose and Mayanand Jha, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—This petition should not become a subterfuge for the State so as not to chase its pending revenues. The Court is not concerned as to how much revenue is due. In the present case, it is stated by AAG 2, the revenues due are over Rs. 180 crores (reference counter affidavit-II filed by the Chief Secretary on 25 June, 2002).

2. The petition only highlights the situation that there are arrears due against the auction conducted to part with the privilege to vend liquor on licences granted to various persons.

3. In none of the five affidavits which are on record, of these three have been filed by the Chief Secretary, there is any element of consciousness that public revenues which are to go into the State treasury, for the assignment of a contract on a public auction of licences to part with the privilege to vend foreign or country liquor, has seen deposits completely.

4. It is surprising that in none of the affidavits whether it is of the Chief Secretary or the other Respondents they are conscious of the fact that there is a long standing rule, framed under the Bihar Excise Act, 1915 known as Rule No. 471-F framed in 1919. Within these lies Rule 53 which puts an obligation on the

State, in context of the matter, to whom grant or not to grant licences. Persons in arrears and withholding State revenues cannot be granted licences. Rule 53 says:

Licenses for the retail sale of any excisable article shall not ordinarily be granted-

(a) to any persons who have been convicted by a Criminal Court of a non-bailable offence, or

(b) to former licensees who are in arrears to Government, or whose conduct has been found to be unsatisfactory, or who have been found guilty of any serious breach of the conditions of their licences.

5. The Court had this case listed especially for orders. It is necessary for the public to know why in another matter which is pending before another Division of the Court conveniently a defence has been taken by the State administration that the licences have been extended because the State is looking for a guidance from the High Court on how to grant the licence. The High Court is not the State Government's solicitor. The affidavit had been filed on behalf of the Excise Commissioner. The defence not to grant licences on a fresh public auction is being attributed to a certain inquiry Committee's report in which the State is still finding out on who are the persons in arrears.

6. It is contended in that affidavit (C.W.J.C. No. 2756 of 2003) that "the Member, Board of Revenue, directed that a guidance be sought from the High Court where concerned P.I.L. C.W.J.C. No. 5020 of 2002 is under consideration." This submission has been sworn from information derived from the record. No personal responsibility has been taken by the Member, Board of Revenue, to make this submission and place this on record. Whether it is the Chief Secretary or the Member, Board of Revenue, they should have known that there is a rule which aids the State administration to collect unpaid arrears. The Court has gone through the record of C.W.J.C. No. 2756 of 2003 and even in the affidavit on behalf of the State of Bihar, now six affidavits, five in the present case and one in the other writ petition, none of the State Respondents are conscious of Rule 53 that a person with a licence to trade in liquor if in arrears, will not receive the privilege to vend. Where is the doubt that a holder of a licence, whether individual, corporate or otherwise, will pile up arrears and continue to enjoy the privilege to vend? Conveniently the State Respondents seem to be ignoramus of their own law. This in itself ought to be a matter of serious inquiry and audit.

7. Even today in the present case the Court has not been informed since when arrears are due and another Division of the Court is being told that licences have been extended because the State Respondents are awaiting guidance from the High Court. This is a convenient way on how not to take a decision. Regulation 53 in its stark reality is available on the statute book and the State Respondents seem to be hiding themselves behind a camouflage, ostrich like in the sand, and protecting defaulters covertly or overtly.

8. Summing up, the Court is told by Additional Advocate General-II that it is accepted on record that there are arrears perhaps amounting to a staggering amount which exceeds Rs. 180 crores. These are public monies which were in arrears until 1999. The exact figure is unknown even today. In fact, the other Hon"ble Division has been very kind to the State Respondents when it recorded on the submissions made on behalf of the State Respondents that "the Law Department was consulted and the department and its legal advisor opined that it would be prudent to record opinion in the matter after disposal of the aforesaid writ application."

9. It was not brought to the notice of the other Division of the Court that there is a clear cut rule (Rule 53) that a licensee or a person in arrears of revenue is barred from receiving a licence to vend liquor. While the State Respondents may be callous in not recovering it's arrears, but not recovering arrears is a very very serious matter.

10. It is entirely up to the government to find out as to who exactly is responsible for not recovering the amount indicated as Rs. 180 crores or above. The Court has reminded the government that these are public monies and if public monies are due then the State ought to know that revenues have to be recovered. Otherwise, it will contribute to deficit financing, and to make up this deficiency the incidence will fall on innocent persons to pay taxes when they have nothing to do with these arrears or defaults. It is also entirely up to the government to find out what action has to be taken against those who permitted these dues to accumulate and further did not permit it to be recovered and how they should be recovered from such officials or their agents and assigns.

11. The Court parts with the record with the remarks that arrears of revenue from liquor business parted by the State on a licence must not yet become another business to permit defaulters to escape.

12. This is a case for a vigilance inquiry from top to bottom. Rule 53 is clear and the State government knows what is due in pursuance of the rule. So far, the State Respondents were conveniently pretending that they are ignoramus of such a rule.

13. A copy of this order be sent to the Law Secretary, Government of Bihar.

14. The petition, as a PIL, succeeds in having its concern certified.